

IT 14-0014 GIL 09/23/14 Withholding – Other Rulings

If a nonresident individual partner's Illinois income tax obligation is fully paid by withholding by the partnership, the partner is not required to file an Illinois income tax return.

September 23, 2014

Re: Composite Income and Replacement Tax Return

Dear Xxxx:

This is in response to your letter received by the Department on February 23, 2014 in which you request a legal tax ruling regarding PA 098-0478, enacted on August 16, 2013. The Department's regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding against the Department, but only as to the taxpayer issued the ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of Department policy that apply, interpret or prescribe the tax laws and are not binding against the Department. See 2 Ill. Adm. Code 100.1200(b) and (c). The nature of your letter and the information provided require that we respond with a General Information Letter.

Your letter states as follows:

COMPANY is a STATE-based law firm with approximately 180 partners and a tax year end of September 30th. Our Partnership operates in multiple states, including Illinois (since January 2006). In Illinois, the Firm has one employee (an attorney) who works out of his home. Since 2006, the Firm has filed a Composite Income and Replacement Tax Return (Form IL-1023-C) to satisfy the annual filing requirement in Illinois for our partners.

We understand that Illinois enacted HB 3157 on August 6, 2013 which will eliminate composite returns for partnerships, S corporations, and trusts for tax years ending on or after December 31, 2014. Instead, Illinois law now requires passthrough withholdings on nonbusiness income sourced to Illinois and to allow credits to be taken against pass-through withholdings.

We are requesting the guidance of the Illinois Department of Revenue whether our current arrangement with one employee in Illinois will prevent COMPANY from filing a composite return for the tax year ending September 30, 2015 (and thereafter) and require each of our approximately 180 partners to file an individual income tax return in Illinois. If filing a composite return will no longer be an option, we will then need to determine how to best structure our presence in Illinois.

RESPONSE

Public Act 98-0478 amended Section 502 of the Illinois Income Tax Act ("IITA"), 35 ILCS 5/1 *et. seq.*, eliminating the option for filing composite returns for partnerships, S corporations, and trusts for tax years ending on or after December 31, 2014. The Public Act also amended Section 709.5 to require withholding for the share of nonbusiness income of the partnership, Subchapter S corporation or trust allocated to Illinois under Section 303 and the net of any credits under Article 2 of the IITA.

For tax years ending after December 31, 2014, COMPANY will withhold pass through income pursuant to Section 709.5 of the IITA; the amount withheld and paid to the Department will be treated as a payment of the estimated tax liability of the partner. No consolidated return will need to be filed with Illinois.

Section 502(a) of the IITA provides as follows:

Notwithstanding the provisions of paragraph (1), a nonresident (other than, for taxable years ending on or after December 31, 2011, a nonresident required to withhold tax under Section 709.5) whose Illinois income tax liability under subsections (a), (b), (c), and (d) of Section 201 of this Act is paid in full after taking into account the credits allowed under subsection (f) of this Section or allowed under Section 709.5 of this Act shall not be required to file a return under this subsection (a).

The 2013 IL-1040 Instructions state on page two:

If you are a nonresident and your only income in Illinois is from one or more partnerships, S corporations, or trusts that either filed a Form IL-1023-C, Composite Income and Replacement Tax Return, on your behalf or withheld enough Illinois Income Tax to pay your liability, you are not required to file a Form IL-1040.

For tax years ending on or after December 31, 2014, any partner of COMPANY with sufficient withholding from the partnership to satisfy their income tax liability will not have to file an Illinois return. Nonresident partners may have an obligation to file an Illinois return if they have insufficient withholding, other Illinois sourced income or are seeking a refund. In that case, those partners would report the amounts withheld as a credit against their liability for taxes on the pass through income.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you have any further questions, you may contact me at (217) 524-7580.

Sincerely,

Matthew Crain
Associate Counsel (Income Tax)